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Reply Brief
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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Ronald L. Edens et al.

Serial No.: 10/037,276

Confirmation No.: 6825

Filed: December 31, 2001

For: LABIAL PAD

Examiner: Kidwell, Michele M.

Art Unit: 3761

Docket No.: 17,696

Date: November 1, 2004

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This REPLY BRIEF is filed in response to the EXAMINER'S ANSWER dated 09/28/2004 for the above-identified application.

Contrary to the Examiner's assertions, Appellants' APPEAL BRIEF does include a statement that the claims do not stand or fall together, and does set forth separate **reasons** for the patentability of individual claims. Accordingly, it is again respectfully submitted that Appellants' presented claims do **not** stand or fall together.

It is submitted that Claims 1-2, 5-10, 13-17, 27-28 and 31-35 are patentable over U.S. Patent 6,432,096 to McFall, et al. (hereinafter McFall), and that McFall fails to anticipate the claimed invention.

McFall describes an absorbent device that is insertable into the interlabial space of a female wearer for catamenial purposes, incontinence protection, or both. The absorbent interlabial device has at least a body-contacting surface and a backsheet having an integral protrusion formed therein of sufficient dimensions to aid in insertion into the interlabial space.

Examples of shapes for the main body portion of the device include ovoid, elliptical, trapezoidal, rectangular, triangular, diamond-shaped, or any combination of the above.

McFall, however, does not disclose or suggest an absorbent labial pad having the configurations called for by Appellants' presented claims. In particular, McFall does not teach a labial pad in which an absorbent has a maximum length extending from a first transverse end (76) to a spaced apart second transverse end (78), and at least a body-facing surface of the absorbent has a minimum length that extends generally along the principal longitudinal axis from the first transverse end to the second transverse end and is less than the maximum longitudinal length, as called for by the claimed invention.

In the EXAMINER'S ANSWER, the Examiner presents a drawing which purportedly shows how McFall discloses the minimum length called for by the claimed invention. It is submitted that the drawing derived from McFall fails to present the invention called for by the presented claims. To the extent discernible by Appellants' attorney, the "Minimum longitudinal length" identified on the drawing does not properly represent the entirety of an absorbent length that would correspond to the minimum length of the absorbent that is called for by Appellants' presented claims. To the extent that there is an intent to identify another longitudinal length that differs from the "Maximum longitudinal length" identified on the drawing, it is submitted that the identified length dimension is not the entirety of the length of the absorbent and is not properly identified to the minimum length of the absorbent that is called for by the claimed invention. With respect to the points along the principal longitudinal axis that the Examiner may intend to identify, it is readily apparent that the length of the absorbent continues beyond those points. As a result, the length identified by the Examiner is not the completed length of the absorbent that is called for by the presented claims. It is readily apparent that an interpretation that selects two points along a partial length of the absorbent and then ignores the remaining continuations of that absorbent length is improper. Such interpretation is contrary to ordinary understanding, and contradictory to the specification and drawings. To the extent that the longitudinal length of the absorbent in the drawing can be seen to reach a proper minimum, such minimum occurs at the widest part of the absorbent at a location that is significantly spaced-away from the principal longitudinal axis.

As a result, when compared to Appellants' claimed invention, the structures taught by McFall would be less able to be effectively positioned and held between the labia majora of the

wearer. The configurations taught by McFall would be less conveniently grasped for interlabial placement on the wearer, and would less effectively provide a desired, customized fit adjustment. It is, therefore, readily apparent that McFall does not disclose or suggest Appellants' claimed invention.

Accordingly, the rejection under 35 U.S.C. § 102(e) should be reversed.

It is respectfully submitted that Claims 3-4, 11-12, 18, 22-26 and 29-30 are patentable in view of U.S. Patent 6,432,096 (McFall) and that the Examiner's rejections under 35 U.S.C. §103 are not proper. For the reasons set forth in Appellants' APPEAL BRIEF, the Examiner has not established "*prima facie*" that the cited reference would disclose or suggest Appellants' claimed invention. The cited reference, when considered in its entirety, does not disclose or suggest the combination asserted by the Examiner. If anything, the reference suggests that the combination asserted by the Examiner would be contrary to the desires and expectations of the person of ordinary skill. It is respectfully submitted that a proper consideration of McFall would provide no motivation to make the modifications needed to synthesize the invention called for by the presented Claims 3-4, 11-12, 18, 22-26 and 29-30. Moreover, McFall provides even less motivation to synthesize the invention called for by Claims 3, 11, 18 and 29.

As an initial matter it is submitted that, McFall fails to teach a labial pad in which an absorbent has a maximum length extending from a first transverse end (76) to a spaced apart second transverse end (78), and at least a body-facing surface of the absorbent has the minimum length that extends generally along the principal longitudinal axis in the arrangements called for by the claimed invention. Furthermore, McFall provides no motivation to make the further changes and modifications needed to synthesize a configuration of the absorbent that incorporates the combination of maximum and minimum lengths called for by the presented claims.

The Examiner has asserted that McFall discloses that the main body portion of the article can be any "suitable" configuration, as set forth in McFall at col. 5, lines 29-30. It is submitted, however, that McFall does not disclose or suggest that a dog bone or hourglass shape would be a "suitable" configuration for a labial pad. Even if one assumes for the purposes of argument that a dog bone or hourglass shaped configuration is well known in the art and that either configuration is "routinely" used to provide articles that better conform to the wearer's anatomy, it is pointed out that in the prior art, the dog bone or hourglass shapes have

been "routinely" employed in conventional sanitary napkins, which have been constructed to accommodate a placement between and against the wearer's thighs. While the dog bone and hourglass shapes of such conventional sanitary napkins have been configured to conform to the thighs of the wearer, the thigh regions encountered by a sanitary napkin would significantly differ from the interlabial parts of the female anatomy encountered by a labial pad. Indeed, McFall at Fig. 6 and at column 22, lines 22-61 teaches that the shape of the sanitary napkin is particularly suited to fit a different portion of the anatomy, and operates as a different part of the overall "system". Moreover, the folding of the labial pad prior to disposition within the vestibule of the wearer would be adverse and contrary to any "conformance" objective taught with respect to fitting a sanitary napkin against the wearer's thighs. When the disclosure of McFall is taken in its entirety, as a whole, it is readily apparent that McFall has separated and differentiated the sanitary napkin portion of the "system". As taught by McFall, a person of ordinary skill would understand that the features that pertain to the sanitary napkin serve a different purpose and would not pertain to the labial pad portion of the system.

Thus, it is readily apparent that the Examiner has not established *prima facie* that the claimed invention would be unpatentable over McFall under 35 U.S.C. § 103(a). To the contrary, it is respectfully submitted that the Examiner has engaged in impermissible "hindsight", and has employed Appellants' disclosure as an instruction guide for picking and choosing particular elements from a universe of possible features. In the absence of Appellants' disclosure, the teachings of McFall would not lead a skilled person to the modifications needed to synthesize the configurations of the claimed invention, and the required changes would remain unapparent and unobvious. It is, therefore, respectfully submitted that Appellants' claimed invention is patentable over McFall.

Accordingly, the rejection under 35 U.S.C. § 103 should be reversed.

CONCLUSION

For the reasons set forth in the above remarks, it is respectfully submitted that the Examiner's rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103 based upon U.S. Patent 6,432,096 to McFall, et al. should be reversed. It is respectfully submitted that Appellants' claimed invention is neither expressly taught by nor inherent in the cited reference. Furthermore, the Examiner has not established a *prima facie* case that the particular combinations of components called for by Appellants' claims would be suggested by a proper

consideration of the cited reference. To the contrary, it is readily apparent that when the cited reference is considered in its entirety and the reference is taken as a whole, a proper consideration of the cited reference would teach away from Appellants' claimed invention. Only in light of Appellants' present disclosure and the impermissible use of hindsight would a person of ordinary skill be directed to the significant changes and modifications needed to reconfigure the various components to arrive at Appellants' claimed invention. It is, therefore, readily apparent that the invention called for by Appellants' presented claims is patentable over the cited reference.

Accordingly, it is respectfully submitted that claims 1-18 and 22-35 are in allowable condition, and that the Examiner's rejections should be **reversed**.

Please charge any prosecution fee(s) which may be required for this paper to Kimberly-Clark Worldwide, Inc., Deposit Account No. 11-0875.

Respectfully submitted,

RONALD L. EDENS, ET AL.

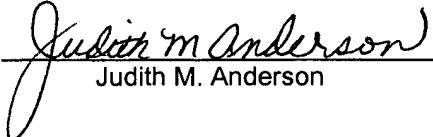
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CERTIFICATE OF MAILING

I, Judith M. Anderson, hereby certify that on November 1, 2004 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 
Judith M. Anderson